IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 65 OF 1996
With
INCOME TAX REFERENCE NO. 96 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
MIHIR TEXTILES LTD. - Opponent(s)

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Appearance :
MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

COMMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

This judgement shall dispose of I.T.R. Nos.65

of 1996 and 96 of 1997.

2. In I.T.R. No.65 of 1996, the Income Tax Appellate Tribunal, Ahmedabad Bench “A”, has referred the following question, which arises out of I.T.A. No.702/Ahd/1991 relating to Assessment Year 1986-87, for the opinion of this Court:

> “*Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to work out the interest under Sec.214 for the period upto the date of order giving effect of the appellate order?*

In I.T.R. No.96 of 1997, the Income-Tax Appellate Tribunal, Ahmedabad Bench “A”, has referred the following questions, which arises out of I.T.A. No.714/Ahd/1987 relating to Assessment Year 1981-82, for the opinion of this Court:

> “1) *Whether the Appellate Tribunal is right in law and on facts in directing the Income-Tax Officer to award interest u/s. 214 on the refund amount of advance tax to the assessee?*
>
> *2) Whether the Appellate Tribunal was right in law and on facts in holding that Sec. 154 was applicable to the case, when the issue raised by the Assessee was wholly*

debatable?"

2. For convenience, we are taking the facts from I.T.R. No.65 of 996 only. The facts are that while giving effect to the appellate order, the Assessing Officer passed an order and allowed interest under Section-214 of the Income Tax Act, 1961 ("the Act" for short) upto the date of regular assessment. In the appeal, the Commissioner of Income-Tax (Appeals), relying upon a judgement of the Full Bench of this Court in the case of ***Bardolia Textile Mills Ltd. vs. I.T.O.***, [***(1985) 151 I.T.R. 389***], directed the Assessing Officer to allow interest upto the date of the appellate order i.e. 31st January, 1990. The Revenue came up in appeal, but, the Tribunal confirmed the order of the Commissioner of Income-Tax (Appeals). After the decision was made by the Tribunal, an application for Reference was made and it was submitted that since after overruling of the judgement of this Court in the matter of ***Bardolia Textile Mills Ltd.*** (*supra*) by the Supreme Court in the matter of ***Modi Industries Limited & Ors. vs. Commissioner of Income-Tax & Anr.,*** [***(1995) 216 I.T.R 759***], the question be referred to the High Court under Section-256(1) of the Act. Accordingly, the above referred questions have been referred to this Court.

3. In the matter of ***Modi Industries Limited*** (*supra*), the Supreme Court has observed as under:

> *"Sub-section (1A) of section 244 does not affect the operation of section 214 in any manner whatsoever. The period during which interest has to be paid under section 214 is the first day of the relevant assessment year to the date of the assessment order. The period covered by section 244(1A) is the period commencing from the date of payment of tax or penalty.*
>
> *Sections 214 and 215 with effect from April 1, 1985, have brought about important changes in the scheme of payment of interest by the Central Government or the assessee, as the case may be. The period, therefore, for which the interest has to be paid remains the same, i.e., the first day of the relevant assessment year to the date of the regular assessment (first assessment). But, the quantum of interest payable will depend upon the amount of refund payable after the quantum of tax has been payable is finally determined in appeal, revision or any other proceeding."*

The Supreme Court has further observed as under:

> *"(i) Up to March 31, 1975, interest under section 214 is payable from the first day of April of the relevant assessment year to the*

date of the first assessment order. The amount on which the interest is to be paid is the amount of advance tax paid in excess of the tax payable by the assessee as calculated in the regular assessment (the first assessment order). The amount on which interest was payable did not vary due to reduction or enhancement of tax as a result of any subsequent proceeding. But with effect from April 1, 1985, while the period for which interest was payable remained constant, the amount on which the interest was payable, varied with the variation in the quantum of refund as a result of any subsequent orders.

(ii) If any tax paid pursuant to an assessment order after March 31, 1975 (which will include tax deducted at source and advance tax to the extent the same has been retained and treated by the Income-tax Officer as payment of tax in discharge of the assessee's tax liability in the assessment order), becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the refundable amount under section 244(1A). For the purpose of this section, the amount of advance payment of tax and the amount of tax deducted at source must be treated as payment of income-tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in other words the date of the assessment order.

(iii) With effect from April 1, 1985, interest payable under section 214 will increase or decrease in accordance with the variation in the quantum of the excess payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in sub-section (1A).”

4. In view of the said authoritative pronouncement by the Supreme Court, we must hold that the Commissioner of Income-Tax (Appeals) and the Tribunal were unjustified in extending the period for grant of interest. Accordingly, we answer the question in I.T.R. No. 65 of 1996 and Question No.1 of I.T.R. No.96 of 1997 in favour of the Revenue. So far as Question No.2 in I.T.R. No.96 of 1997 is concerned, in view of the above referred judgement of the Supreme Court, this question is not required to be answered. Accordingly, both the References stand disposed of. No costs.

[R.S.Garg, J.]

[M. R. Shah, J.]

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